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**FROM:** CHRISTOPHER T. GRIFFITH  
REGISTRATION No. 33,392

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**To:** EXAMINER SHAWNA JEANNINE SHAW  
GROUP 3737  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C.

TELEPHONE NUMBER:

FACSIMILE NUMBER: 703-872-9306

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IN RE APPLN OF: ALAM ET AL.  
APPLICATION No. 10/034,432  
FILED: DECEMBER 27, 2001  
FOR: INDOCYANINE GREEN (ICG) COMPOSITIONS AND RELATED  
METHODS OF USE  
GROUP ART UNIT: 3737  
EXAMINER: SHAWNA JEANNINE SHAW

A TERMINAL DISCLAIMER IN THE REFERENCED APPLICATION FOLLOWS.

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**BEST AVAILABLE COPY**PATENT  
Attorney Docket No. 207324

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of:

ALAM et al.

Application No. 10/034,432

Filed: December 27, 2001

For: INDOCYANINE GREEN (ICG)  
COMPOSITIONS AND RELATED  
METHODS OF USE

Art Unit: 3737

Examiner: Shawna Jeannine Shaw

FEB 17 2005

**TERMINAL DISCLAIMER UNDER 37 CFR 1.321**

Assignee, Akorn, Inc., is the owner of 100 percent interest in the above-identified application (hereinafter "the present application").

Pursuant to 37 CFR 3.73(b), the assignment of the present application from the inventors, or chain of title from the inventors, to the Assignee was recorded in the Patent and Trademark Office at Reel 012752, Frame 0848, on March 25, 2002.

Also, pursuant to 37 CFR 3.73(b), the undersigned has reviewed all the evidentiary documents accompanying or referred to in this Terminal Disclaimer and, to the best of the undersigned's knowledge and belief, certifies that title is in the Assignee.

Assignee, through its attorneys and agents, hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the present application that would extend beyond the expiration date of the full statutory term defined in 35 USC 154 to 156 and 173 of any U.S. patent granted on pending Application No. 10/365,028, filed on February 12, 2003, (hereinafter "the second patent"), as shortened by any terminal disclaimer filed prior to the grant of the second patent. Assignee, through its attorneys and agents, further agrees that any patent granted on the present application shall be enforceable only for and during such period that its legal title is the same as the legal title to the second patent, this agreement to run with any patent granted on the present application and to be binding upon the grantee, its successors, and assigns.

In making the above disclaimer, Assignee does not disclaim the terminal part of any patent granted on the present application that would extend to the expiration date of the full statutory term of the second patent as defined in 35 USC 154 to 156 and 173 in the event the second patent terminates prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer filed prior to the grant of the patent. Examples of such

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In re Appln. of ALAM et al.  
Application No. 10/034,432

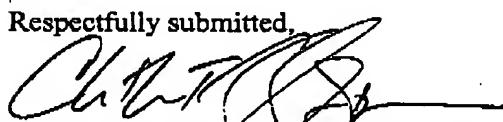
non-applicable termination of the patent granted on the second patent are as follows: (1) second patent expires for failure to pay a maintenance fee, (2) second patent is held unenforceable, (3) second patent is found invalid by a court of competent jurisdiction; (4) second patent is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, (5) second patent has all claims canceled by a reexamination certificate or reissuance, and (6) second patent is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

In making this disclaimer, Assignee reserves the right to extend the term of any patent granted on the present application for a period of delay, in the event the delay is defined by statute and/or regulation as allowing, or providing for, an extension of term. This right is reserved in the event the second patent terminates, or does not terminate, prior to the expiration of its full statutory term. Examples of such a delay include regulatory delay, and delay due to appellate review.

The undersigned is empowered to act on behalf of the Assignee.

The Commissioner is hereby authorized to charge to Deposit Account 12-1216 the fee of \$130.00 set forth in 37 CFR 1.20(d). A duplicate copy of this document is enclosed herewith for that purpose.

Respectfully submitted,



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Date: February 17, 2005

In re Appln. of ALAM et al.  
Application No. 10/034,432

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this TERMINAL DISCLAIMER (along with any documents referred to as attached or enclosed) is being facsimile transmitted to the U.S. Patent and Trademark Office, Attention: Examiner Shawna Shaw, Art Unit 3737, Facsimile Number 703-872-9306.

Date: February 17, 2005

Terminal Disclaimer Copending Application (Revised 12/06/04)

